



PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Toshiro OYAMA

Application No.: 09/988,768

Filed: November 20, 2001

For: PNEUMATIC TIRE WITH SIDEWALL HAVING CONCAVE PORTION  
ADJACENT CONVEX MARK OR CONVEX PORTION ADJACENT  
CONCAVE MARK (AS AMENDED)

Attorney Docket No.: OGW-0204

Examiner: A. Johnstone

Art Unit: 1733

Confirmation No.: 9101

**PETITION TO ACCORD CLAIM FOR  
FOREIGN PRIORITY UNDER 37 CFR §1.183**

**MAIL STOP DAC**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Under 37 CFR §1.183, it states:

In an extraordinary situation, when justice requires, and the requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Commissioner or the Commissioner's designee, sua sponte, or on petition of the interested party, subject to such other requirements as may be imposed.

It is respectfully submitted that, due to an extraordinary situation, the above-identified application was not timely filed in order to gain benefit of Applicant's claim of foreign priority. The filing of the application was delayed due to, at that time, an anthrax contamination threat to the U.S. mail system. A delay in receiving the application documents from the Japanese applicant through the U.S. mail system as a result of the anthrax contamination threat resulted in an untimely filing of the application to claim the benefits of foreign priority. Applicant respectfully requests waiver of the requirement of the regulations for timely filing the application to claim the benefit of foreign priority.

The facts are as follows:

During late September or early October, 2001, deadly anthrax spores had contaminated a portion of the U.S. mailing system, particularly in the Washington, D.C. area.

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In a letter dated October 19, 2001, (Exhibit 1), the Applicant from Japan sent to the offices of Applicant's representatives in the United States application documents including a specification and drawings through the U.S. postal system that were to be filed with United States Patent and Trademark Office prior to October 27, 2001, one year after the date on which the corresponding foreign application was filed in Japan.

On November 14, 2001, Applicant's representatives acknowledged, via facsimile (Exhibit 2), that Applicant's representatives had received through the U.S. postal system a priority document from the Applicant but Applicant's representatives were unable to match that priority document to any of Applicant's representatives client matter numbers.

In the Applicant's letter dated November 15, 2001 (Exhibit 3), the Applicant investigated and discovered that the application was not received by Applicant's representatives. Please note that the application was allegedly carried to Applicant's offices on Sunday, October 21, 2001, and that the mail carrier allegedly left a "notice of non-delivery" at the offices of Applicant's representatives and brought the application back to the post office. However, a reasonable person must question the veracity these allegations of fact.

The office building of the Applicant's representatives is closed on Sunday and therefore it is unlikely that the mail carrier was able to enter the building. Assuming that the mail carrier was able to enter the building, it is unlikely that the mail carrier was able to gain access to the fifth floor where the Applicant's representatives are located because the stairwells are locked and a special castle key is required to operate the elevators. Assuming that the mail carrier was able to gain access to the fifth floor, all doors to the offices of the Applicant's representatives are locked on Sunday. It is unlikely that any mail carrier would assume that someone would be available to sign a delivery receipt in an office building that is closed on Sundays.

No one at the offices of the Applicant's representatives found a "notice of non-delivery" receipt that was allegedly left by the mail carrier. Mail carriers routinely leave copies of airway bills and the like at the doorway of Applicant's representatives. However, a "Notice of Non-Delivery" was never found by Applicant's representatives.

In a letter dated November 15, 2001, by Applicant's representatives (Exhibit

4), Applicant's representatives notified the Applicant that an investigation was conducted to determine where the application documents might be. Apparently, the application documents were returned to the Brentwood Post Office, which was one of the first offices to be closed due to anthrax contamination.

In a November 16, 2001, facsimile letter (Exhibit 5), the Applicant forwarded a substitute set of the application documents which were subsequently filed with United States Patent and Trademark Office on November 20, 2001.

Applicant respectfully requests that the Office of the Deputy Commissioner for Patent Examination Policy carefully review Applicant's October 19, 2001, cover letter (Exhibit 1) that was used to forward the original application documents. Please note Applicant's representatives date-stamped the application documents as being received on January 11, 2002.

Applicant's representatives warrant and represent that all of the application documents including the October 19, 2001, cover letter were shaded in a brownish-yellow color indicating that these documents were irradiated as a precautionary measure by the United States Postal Service to decontaminate the contents of this mail to avoid the possibility of anthrax contamination.

The status of the above-identified patent application is other than a small business entity. The Commissioner is hereby authorized to charge the appropriate fee under 37 C.F.R. § 1.17(h) to Deposit Account No. 18-0013 as well as any other fees that may be chargeable hereunder.



2001年11月16日, 11時18分

小田・野口・南丁特許事務所

NO. 7436 P. 2

## OGAWA, NOGUCHI & SAIKA

Patent Attorneys

OGAWA, Shin-ichi

NOGUCHI, Kensho

SAIKA, Kazuhiko

Manager

SEKISUE, Isamu

### International Patent Office

Akiyama Building

22-13, Toranomom 1-chome

Minato-ku, Tokyo 105-0001 Japan

Facsimile : 81-3-5532-1052

Telephone: 81-3-5532-1051

E-mail: ognosa@mb.infoweb.ne.jp

Tokyo, October 19, 2001

Mr. David T. Nikaido  
Rader, Fishman & Grauer, PLLC  
1233 20<sup>th</sup> Street, N.W., Suite 501  
Washington, D.C. 20036  
U. S. A.

COPY

Re: ORDER FOR NEW APPLICATION IN U.S.A. -  
Our Reference: 11332 US

Dear Sir:

We would like you to prepare a new Convention application for a U. S. Letters Patent on an invention entitled: PNEUMATIC TIRE, and file the application by October 27, 2001.

Information on Inventor (Applicant/Assignor), Assignee and basic Japanese Application are provided in the hereto attached Information Sheet.

The following documents marked ENC. are enclosed herewith and marked FOL. will follow at a later date.

ENC. Declaration/Power of Attorney;  
ENC. Assignment;  
ENC. Specification (2 copies and a floppy disk);  
ENC. Drawings; and  
FOL. Certified copy.

If there should be any other information and/or material which you may need, please immediately notify.

Kindly acknowledge the receipt hereof by return facsimile, and subsequently forward to us two copies as filed of the application together with your bill in duplicate and, when available, the official Filing Receipt.

Very truly yours,

Ogawa, Noguchi & Saika

Shin-ichi Ogawa  
SO:NK:IS:mh

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Information Sheet

COPY

Inventor/Applicant (Assignor):

Name: Toshiro OYAMA

Address: c/o The Yokohama Rubber Co., Ltd., Hiratsuka Factory, 2-1, Oiwake,  
Hiratsuka-shi, Kanagawa-ken, Japan

Nationality: Japanese citizen

Assignee:

Name: The Yokohama Rubber Co., Ltd.

Address: 36-11, Shimbashi 5-chome, Minato-ku, Tokyo, Japan

Nationality: Japanese corporation

Prior Application:

Patent Application Number 2000-328750 filed in Japan on October 27, 2000 by  
(or in the name of) the Assignee corporation.

Notes:

In filing the present application, please claim the priority right based on the  
above Japanese prior application.

JOB #027

DATE	TIME	TO/FROM	MODE	MIN/SEC	PGS	STATUS
001 11/15	00:29	81355321052	EC--S	05' 21"	003	OK

**RADER,**

**FISHMAN**

**& GRAUER**

**PLLC**

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Litigation • Copyrights • U.S. and Foreign Portfolio Management  
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**To:** Mr. Isamu Sekisue  
Ogawa, Noguchi & Saika  
Akiyama Bldg.  
22-13, Toranomon 1-chome  
Minato-ku, Tokyo 105-0001 JAPAN

**From:** Heidi Kim  
Secretary to David Nikaido

**Fax:** 011-81-3-5532-1052

**Page:** 3

**Phone:** 011-81-3-5532-1051

**Date:** November 14, 2001


**Re:** Priority Document based on Japanese Patent Appl. No. 2000-328750  
Your Ref: 11332 US

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

*Dear Mr. Sekisue:*

*We have recently received the attached priority document, however, our records do not show that we have this application. Would you please check to see if you have our reference number? We apologize for the inconvenience but we are unable to match this document with a file. Thank you for your cooperation and patience and we look forward to your response.*

*Very truly yours,*

  
Heidi Kim

/hk

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable laws. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return original message to us at the above address via U.S. Postal Service.  
Thank you.

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**BY FAX**  
Total number of  
Pages 3

**To:** Mr. Isamu Sekisue  
Ogawa, Noguchi & Saika  
Akiyama Bldg.  
22-13, Toranomom 1-chome  
Minato-ku, Tokyo 105-0001 JAPAN

**From:** Heidi Kim  
Secretary to David Nikaido

**Fax:** 011-81-3-5532-1052

**Page:** 3

**Phone:** 011-81-3-5532-1051

**Date:** November 14, 2001

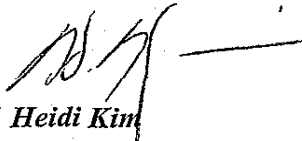
**Re:** Priority Document based on Japanese Patent Appl. No. 2000-328750  
Your Ref: 11332 US

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*We have recently received the attached priority document, however, our records do not show that we have this application. Would you please check to see if you have our reference number? We apologize for the inconvenience but we are unable to match this document with a file. Thank you for your cooperation and patience and we look forward to your response.*

*Very truly yours,*

  
*Heidi Kim*

/hk

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Thank you.



# OGAWA, NOGUCHI & SAIKA

## International Patent Office

### Patent Attorneys

OGAWA, Shin-ichi

NOGUCHI, Kensho

SAIKA, Kazuhiko

### Manager

SEKISUE, Isamu

Akiyama Building

22-13, Toranomom 1-chome

Minato-ku, Tokyo 105-0001 Japan

Facsimile : 81-3-5532-1052

Telephone: 81-3-5532-1051

E-mail: ognosa@mb.infoweb.ne.jp

Tokyo, October 22, 2001

Mr. David T. Nikaido  
Rader, Fishman & Grauer, PLLC  
1233 20<sup>th</sup> Street, N.W., Suite 501  
Washington, D.C. 20036  
U. S. A.

New Application in U.S.A. -  
Our Ref: 11332 US

Dear Sir:

Further to our order letter of October 19, 2001, in order to support the claim to the priority right based on Japanese patent application No. 2000-328750 filed on October 27, 2000, we have now obtained from the Patent Office and herewith enclose an officially certified copy of such Japanese application.

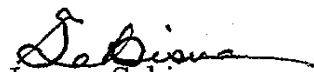
Kindly oblige us by acknowledging upon receipt.

We shall also appreciate if you could notify when the enclosed priority document is subsequently placed on file.

Thank you for your kind attention to this.

Very truly yours,

Ogawa, Noguchi & Saika



Isamu Sekisue

IS:mh

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日 本 国 特 許 庁  
JAPAN PATENT OFFICE

別紙添付の書類に記載されている事項は下記の出願書類に記載されている事項と同一であることを証明する。

This is to certify that the annexed is a true copy of the following application as filed with this Office

出 願 年 月 日

Date of Application:

2000年10月27日

出 願 番 号

Application Number:

特願2000-328750

出 願 人  
applicant(s):

横浜ゴム株式会社

2001年10月 4日

# OGAWA, NOGUCHI & SAIKA

## International Patent Office

### Patent Attorneys

OGAWA, Shin-ichi

NOGUCHI, Kensho

SAIKA, Kazuhiko

### Manager

SEKISUE, Isamu

Akiyama Building

22-13, Toranomom 1-chome

Minato-ku, Tokyo 105-0001 Japan

Facsimile : 81-3-5532-1052

Telephone: 81-3-5532-1051

E-mail: ognosa@mb.infoweb.ne.jp

Tokyo, November 15, 2001

**Mr. David T. Nikaido**

RADER, FISHMAN & GRAUER, PLLC

Lion Building

1233 20th Street, N.W., Suite 501

Washington, D.C. 20036

U. S. A.

VIA FACSIMILE (1 PAGE) & CONFIRMATION BY AIRMAIL

Re: New U.S. Patent Application -

Toshiro OYAMA - Our Ref: 11332 US

Dear Sir:

Thank you for your facsimile letter of November 14, 2001, made out by Ms. Heidi Kim for acknowledgement of receipt of the priority document for this new application.

As a result of an investigation we made through Tokyo International Postal Office, it was discovered that you did not receive the application:

We sent out the application on 19 October 2001 by an "Express Mail Service" (EMS) mail. Attached hereto is a copy of the receipt of the EMS mail issued by our local postal office at which we deposited the mail. The mail was carried to your offices on 21 October 2001, which however fell a Sunday and your offices were closed on that day. The mail carrier (mail man) left a "notice of non-delivery" at your offices and brought back the mail to the postal office. Since then, the mail was kept on a shelf in the postal office, just waiting for your contact.

Thus, it is imperative that you urgently contact the postal office in your mail delivery zone, receive the EMS mail and file the new application without delay. If you could somehow recover the lost priority right in the circumstances, please exert every effort to file the application as a Convention application having 27 October 2000 for the priority date to be claimed. Otherwise, the application shall have to be filed as a non-Convention application in a manner of securing an earliest possible filing date.

We anxiously wait for hearing from you.

Very truly yours,

Ogawa, Noguchi & Saika

*for K. Saika*  
Shin-ichi Ogawa  
SO:KS:IS:is

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441. 野口・森田設計事務所

187. 1882

[illegible]

**RADER,**

**FISHMAN**

**& GRAUER**

**PLLC**

*VIA FACSIMILE*

Lion Building  
1233 20th Street N.W., Ste. 501  
Washington D.C. 20036  
Tel: (202) 955-3750  
Fax: (202) 955-3751

Yoichiro Yamaguchi  
(202) 955-8788  
yy@raderfishman.com

November 15, 2001

Mr. Shin-ichi Ogawa  
Ogawa, Noguchi & Saika  
International Patent Office  
Akiyama Building  
22-13, Toranomom 1-chome  
Minato-ku, Tokyo 105-0001, JAPAN

**URGENT**

Re: New U.S. Patent Application  
Inventor: Toshiro OYAMA  
Your Ref: 11332 US

Dear Mr. Ogawa:

This will acknowledge receipt of your letter of November 15, 2001 concerning the above-identified application. We regret that the application papers have not been received yet, even though our records show that the priority document was received on November 5, 2001.

We have contacted the post office and it appears that a delivery attempt was made on Sunday, however, the building was closed. Therefore, the package was forwarded to the branch office in Brentwood and has been there ever since. As you may be aware, there are many cases of anthrax appearing in U.S. and the Brentwood Post Office was one of the first post offices to be closed and will remain closed for unspecific time. We do not have a record of receiving a notice that the delivery attempt was made.

Upon receipt of the application papers, we will prepare and file the application without claiming the Convention priority, even though the signed Declaration may include the priority data, and an Examiner may require a corrected Declaration. Please send us the application at the above e-mail address or by facsimile as soon as possible so that we can attend to the filing of the application.

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Computer and Internet Law • Trade Secrets • Unfair Competition*

Bloomfield Hills

Washington, D.C.

Denver

Salt Lake City

Tokyo

**RADER,**

**FISHMAN**

**& GRAUER**

**PLLC**

Mr. Shin-ichi Ogawa

November 15, 2001

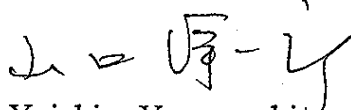
Page 2

We, however, may prove the date of invention by using the certified copy of earlier filed application in Japan. The U.S. Patent Law (35 U.S.C.) Section 104(a) provides that an applicant for a patent . . . may not establish a date of invention by reference to knowledge or use thereof . . . in a foreign country other than . . . a WTO member country [such as Japan], except as provided in Section . . . 119 . . . of this title. In other words, priority may be established in Japan under Section 104(a) regardless of Convention priority which may be established under Section 119. If an Examiner cites in her Office Action a reference published between an earliest filing date in Japan and actual filing date in the U.S., it is necessary for an applicant to establish the date of invention. In such a case, the applicant may simply file a Declaration under Rule 1.131 to antedate the reference.

We would like to take this opportunity to remind you of the continuous duty to disclose all information which is known to be material to patentability. Please note the importance of submitting prior art within three (3) months of filing and certainly before issuance of the first Office Action. If you are aware of relevant prior art which should be considered, please forward copies of such art, with appropriate comments.

We will advise you of further developments in this matter as they occur. If you have any questions, please let us know.

Very truly yours,

  
Yoichiro Yamaguchi

YY/hk

# OGAWA, NOGUCHI & SAIKA

International Patent Office

Patent Attorneys

OGAWA, Shin-ichi

NOGUCHI, Kensho

SAIKA, Kazuhiko

Manager

SEKISUE, Isamu

Akiyama Building

22-13, Toranomon 1-chome

Minato-ku, Tokyo 105-0001 Japan

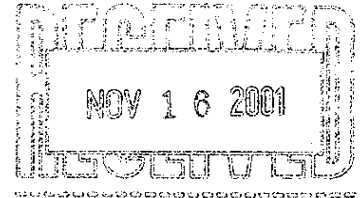
Facsimile : 81-3-5532-1052

Telephone: 81-3-5532-1051

E-mail: ognosa@mb.infoweb.ne.jp

Tokyo, November 16, 2001

**Mr. Yoichiro Yamaguchi**  
RADER, FISHMAN & GRAUER, PLLC  
Lion Building  
1233 20 th Street, N.W., Suite 501  
Washington, D.C. 20036  
U. S. A.



VIA FACSIMILE (9 SHEETS) & CONFIRMATION BY AIRMAIL

Re: New US Patent Application -  
Toshiro OYAMA - Our Ref: 11332 US

Dear Sir:

Thank you for your facsimile letter of November 15, 2001.

According to your recommendation, we are forwarding copies of application papers as follows:

By e-mail, the specification (description and claims, 11 pages) and drawing figures (3 sheets, Fig. 1 to Fig. 7). PASS WORD: 11332USRADER

By facsimile, our order letter of October 19, 2001 (1 page), information sheet (1 sheet), executed Declaration (2 sheets), executed Assignment (1 sheet), and the same drawing figures as above.


By airmail, the same specification as above in addition to the above facsimile-sent copy papers.


Kindly acknowledge upon receipt, and carry out the filing of the application at your earliest convenience.

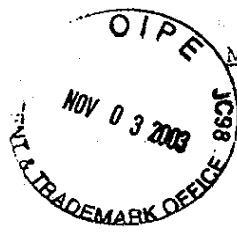
Thank you for your particular cooperation at this time.

Very truly yours,

**Ogawa, Noguchi & Saika**

  
Isamu Sekisue  
IS:is

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Date  
11-16-01  




OGW-0204  
85158-0204